

**ZONING BOARD OF APPEALS
TOWN OF LEWISBORO
MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, November 28, 2018 at 7:43 P.M., at the Town of Lewisboro Offices at Orchard Square, 79 Bouton Road, South Salem, New York.

Board Members:

Present: Robin Price, Jr. Chairman
Thomas Casper
Carolyn Mandelker
Jason Krellenstein
Absent: Todd Rendo

Also Present:

Mary Hafter, Secretary
Joseph Angiello,
Building Inspector

The Meeting was called to order at 7:43 P.M. Chairman Price introduced the members of the Board who were present, advised that they were awaiting for one member, and noted the emergency exits. (The next ZBA meeting is scheduled for Wednesday, December 19, 2018 with a site walk scheduled for Saturday, December 15, 2018.)

I. Review and adoption of the Minutes of October 24, 2018

Chairman Price moved to adopt the minutes of October 24, 2018. The motion was seconded by Mr. Krellenstein; to approve: Chairman Price, Mr. Krellenstein, and Mrs. Mandelker.

II. PUBLIC HEARINGS

Chairman Price advised that the Board was awaiting the arrival of one member but also that a member was unable to attend; therefore, the matters were going to be taken out of order. Chairman Price noted to Mr. Sirignano that there would only be three members present, so that he could decide whether he wanted to proceed or have the matter held over until the next meeting.

CAL. NO. 22-18-BZ

Application of John Buckley, [Buckley, John V. III & Linda K., owners of record], 33 Deerfield Road, Katonah, New York, for a variance of Article IV, § 220-23E of the Zoning Ordinance in the matter of a proposed propane tanks in an R-1/2A, One-Half-Acre Residential District.

The property is located on the north side of Deerfield Road, designated on the Tax Map as Sheet 9C, Block 10792, Lot 63, in an R-1/2A, One-Half-Acre Residential District consisting of approximately 0.367 acres.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Buckley was present and advised that he was looking for a place to put propane tanks in his yard to allow his generator to operate; he had submitted photos. He noted that his yard is a confined space with rock and stairs, and on the side where he is proposing for the tanks to be installed is where the utilities come into the house. The generator does not need a variance, but the propane tanks will. Mr. Buckley stated he has surveys and photos of the placement and would accommodate putting screening up if anyone in the neighborhood has any issues with looking at the white tanks. He stated he did not see any alternative without incurring excessive financial difficulty, as he would have to trench.

Chairman Price noted that four members of the Board had a site visit on the property a couple of weeks previous, and they discussed the option of placing the tanks next to the garage, next to the tank that already exists. Mr. Buckley noted that location has a steep slope next to it, which would require the area to be dug out. Mr. Krellenstein asked whether there were two tanks at that location presently, to which Mr. Buckley stated there is currently only one tank at that location. Chairman Price stated that they were looking at all the options.

Mr. Casper asked whether they were referring to the tanks next to the little shed; Mr. Buckley stated yes, on the other side, there is only one tank currently, used for the gas stove. Mr. Casper asked for the size of the current tank; Mr. Buckley was unsure, but added he uses oil for heat. Mr. Krellenstein asked if the objection to placement of the tanks in that location was because they would not fit and Mr. Buckley would need to trench to reach the generator, which would be too much of an expense. Mr. Buckley agreed and added that he would put them on the other side of the rock wall, but it is also steep and would create a precarious situation, as the slope is 45 degrees. The tanks are large, and four tanks would be needed, according to the fuel company. Mr. Buckley would like to challenge that, as he would prefer fewer tanks. The proposal from his fuel company, Suburban, calls for four tanks, larger than he has now.

Mr. Casper noted the tanks are only for the generator; he does not remember seeing four large tanks for just a generator. Chairman Price described sizing schedules that need to be adhered to and types of tanks. Mr. Buckley stated that the proposal called for four 120 gallon cylinders. Chairman Price noted that three tanks are common. Mr. Krellenstein asked the size of the tank already on the property; Mr. Buckley stated he did not know but it is smaller than 120. Mr. Krellenstein asked for clarification as to whether three tanks or four were being proposed; Mr. Buckley stated four, although he would like three.

Chairman Price asked whether any member of the public would like to speak on the application. Akiko Fasolo of 40 Lake View Path advised that her residence is the only home she has and has been in the residence and loved living there for 49 years. She asked if she could submit photos; Mr. Casper stated he believed she had already submitted some. Ms. Fasolo presented more photos and a combined site plan and noted where the areas where she felt the tanks could be placed on the other side of the house. Mr. Buckley objected to moving the tanks off site, due to the cost. Chairman Price asked Ms. Fasolo to explain her concerns. Ms. Fasolo referred to the email she sent; Chairman Price stated she had five concerns noted in the email, but noted that the generator is not part of the discussion, as it is not in the setback: concern about safety due to the proximity of the tanks to her home, as the tanks will be at a higher elevation than her property; concern for her health due to fumes from the proposed generator;

lack of privacy due to service people refilling the tanks; unsightly view of tanks from her bedroom window; and negative impact on property value.

Chairman Price wanted to address the proximity of tanks to Ms. Fasolo's home, but no scale was available. A discussion ensued regarding the survey, the location of the tank presently on site and where Mr. Buckley would like to place the proposed tanks. Mr. Krellenstein asked about the abutting property, and Mr. Buckley noted he had a letter from a neighbor who had no objection to the location of the proposed propane tanks. Mr. Buckley pointed out his tank, and advised he was showing the dimensions. Mrs. Mandelker asked if Mr. Buckley owned certain property, to which Mr. Buckley responded he did. Mr. Buckley advised where he wanted to put the tanks and screen them with a fence and growth so they could not be seen by the neighbors. Ms. Fasolo advised there would be a lack of privacy due to service people refilling the tanks. Mrs. Mandelker asked Mr. Buckley if he would screen the tanks; Mr. Buckley responded he would, and he would also screen for himself. Ms. Fasolo asked Mr. Buckley to show where the tanks would be; Mr. Buckley obliged by twice showing where the generator and proposed tanks would be. Ms. Fasolo objected to the generator, but Mr. Casper said Mr. Buckley could put the generator where he wanted; the location of the proposed tanks is the question. Mr. Casper advised Ms. Fasolo that she would not see the tanks because of the screening and the fence and that it would be to her benefit as she would see a stone wall anyway. Ms. Fasolo suggested another location, but Mr. Buckley advised he would need to trench to reach the generator. Chairman Price asked whether Ms. Fasolo could see the tank presently on the property; she said yes and stated that she has never complained and it has never been an issue because it is small. Chairman Price advised Ms. Fasolo that if the tanks were placed where proposed, she would not see them at all and that it would look better than the tank that was already present. Mr. Buckley stated that the stockade fence and whatever he planted there may be better to look at than the stone wall.

Chairman Price asked what other points Ms. Fasolo wanted to discuss. He added that he did not see the privacy issue with the service people filling the tanks as an issue. Mr. Buckley noted he has a septic in the area that Ms. Fasolo may see serviced every two years. Chairman Price questioned the noise level of the generator; Mr. Buckley said it was a Generac which would only come on when needed or exercised. Ms. Fasolo said that Katonah has more power outages than anywhere else. Chairman Price noted the generator unit would be very quiet, at 66 decibels at 23 feet; he stated that when the sound reached Ms. Fasolo's house, she would not hear much at all. The Building Inspector said that the generator model being used was the most widely-used generator in town and what everyone gets unless they get a large one.

Ms. Fasolo asked if there was to be an answer now; Chairman Price said the Board would decide tonight. Ms. Fasolo said that for all the reasons, she would have an adverse impact on her property value. Chairman Price said that he believes the biggest concern was how the proposed tanks would look from Ms. Fasolo's house, but with screening she would not see the tanks. The rest of her concerns are safety from the generator, but with the way generators run today, the fumes will be diffused, as it is far enough away. He stated filling the tanks would not be an issue. The decibels are also not an issue as the sound will be very low by the time it reaches her house. Regarding a detrimental impact on her property, the Chairman thinks that a propane tank on property does not impact value. Ms. Fasolo acknowledged having a propane tank on her property but said that it was on the opposite side; she also noted it was very small and only for the kitchen range. Chairman Price stated he didn't feel the tanks would be any more dangerous than what Ms. Fasolo already has. Ms. Fasolo stated she was asthmatic and her bedroom was close. She had nothing further to say; no further members of the public wanted to speak.

Chairman Price noted the letter from Mr. Twitty at 39 Deerfield Road. Ms. Fasolo stated that placing the tanks nearer Mr. Twitty's property would prevent them from being seen; Chairman Price noted that location was not practicable for the propane tanks. Chairman Price read Mr. Twitty's letter. Chairman Price noted that placement near Mr. Twitty's house would not help Ms. Fasolo. Ms. Fasolo again suggested a different location for the tanks. Mr. Casper noted that where Ms. Fasolo was pointing there were pathways and driveways, and Ms. Fasolo acknowledged it was very narrow. Building Inspector Joe Angiello said that he had just advised Chairman Price that for an R ½ acre, the fence could only be four feet maximum. Mr. Buckley stated that he had installed a four-foot fence around the perimeter when he moved in two months' ago and would request a variance for the screening area. Ms. Fasolo requested that Mr. Buckley explore another location. Ms. Mandelker asked that if there were a fence plus shrubbery, then Ms. Fasolo would not be able to see it; Ms. Fasolo said but they could see her but Chairman Price said they could not see over the fencing and shrubbery. Chairman Price said that Ms. Fasolo's suggestion to move the tanks down would not help and that Mr. Buckley has offered to screen with a four foot fence and two or three trees or shrubs.

The motion was made by Mr. Casper; seconded by Carolyn Mandelker; To Approve: Mr. Krellenstein, Chairman Price, Mr. Casper and Mrs. Mandelker.

Chairman Price stated that there will be four foot stockade screening in front of the proposed tanks. Mr. Buckley said he would plant in front of the tanks, but Mr. Krellenstein clarified that there must be a four feet stockade fence and shrubs or trees.

Motion carried; case dismissed.

CAL. NO. 17-18-BZ

Application of Bruce & Melinda Cascio, [Bruce & Melinda Cascio Revocable Trust, owner of record], 1 Old Oscaleta Road, South Salem, New York, for a variance of Article III § 220-9C(1) of the Zoning Ordinance in the matter of the proposed enlargement/extension of the office and storage area in an existing commercial structure (automobile repair shop) in an R-2A, Two-Acre Residential District.

The property is located on the northeast corner (#1) Old Oscaleta Road and Oscaleta Road, designated on the Tax Map as Sheet 35, Block 11826, Lot 2, in an R-2A, Two-Acre Residential District consisting of approximately 2.5 acres.

Michael Sirignano appeared for the applicants; he noted that the architect, Jerome Kerner, was also present to answer questions. Mr. Sirignano stated that the Board first opened the hearing in September, but he was not involved on the matter at the time. He acknowledged that there may have been difficulty in understanding what was being proposed for construction and the reasons for the addition. He explained that the five-foot wide alleyway currently is where the addition would be placed and provided drawings. He explained what was wanted: they want to expand Mr. Cascio's office, so that the alleyway would be enclosed, providing handicap access, enclosed and weather protected, from his office around the building and into the main three-bay garage. They are not proposing to enlarge or intensify the non-conforming auto repair shop. No additional cars are going to be serviced by reason of the small addition of 296 feet. Mr. Sirignano continued that since Mr. Cascio took over the operation

two years ago, he has cleaned up the site. No additional mechanics will be hired; no additional auto parts will be sold.

Mr. Casper asked if intensifying was a term of art; Mr. Sirignano responded it was what the law said. Mr. Sirignano reiterated they are not seeking a use variance and that a non-conforming use can stay there forever. He stated that the question becomes if you want to increase the business use, they would need a use variance; but they are not looking to increase the business activities. He noted this is simply an enlargement of an existing structure that is being used legally for a non-conforming business use. Mr. Casper asked when you expand a structure like that, isn't it by definition expanding the use; he added you can't make a non-conforming building use bigger. Mr. Sirignano stated that there is an exception in the Code but first wanted to proceed with background.

Mr. Sirignano further stated that Mr. Cascio, who has been wheelchair-bound for 31 years, cannot get throughout the entire garage when the three bays are used; the 296 foot addition will allow Mr. Cascio to get through his office to the far end of the garage, where he can access all three bays. Mr. Casper wanted to note for the record whether Mr. Cascio cannot now access the three bays. Mr. Sirignano responded that when all three bays have vehicles being repaired, Mr. Cascio could not get through the garage in a wheelchair; the addition will allow him to get through his office to the full rear section of the garage. Mr. Sirignano showed a drawing of the closest bay, describing Mr. Cascio's route through the addition. Mrs. Mandelker asked if Mr. Sirignano was talking only about the alleyway but added that they are expanding on the left; Mr. Sirignano answered yes and that it would be about five feet, with some shelf storage for Mr. Cascio to access supplies. Mr. Casper asked if it was different from what was brought before, to which Mr. Sirignano responded no, that the dimensions are the same. Mrs. Mandelker clarified that the portion that is an open alley is going to be enclosed; Mr. Sirignano responded yes, and he added that the roof line of the enclosure is going to be lower than the existing garage and lower than Mr. Cascio's personal garage. It will then not be visible from the street or any neighbor. Mrs. Mandelker asked what was present now; Mr. Sirignano responded that it was just open gravel.

Mr. Sirignano stated that under the Town's ordinance, there is an exception in Section 220-9C(1), that specifically addresses non-conforming use of structures, and it says that they are not to be expanded except to conform to applicable laws or ordinances. He stated that in his letter to the Board last week that this addition will make this workplace ADA compliant; it is his opinion that the addition therefore falls within the exception of Section 220-9C(1). He stated that even without that exception, the Board has the power to set a variance. It is a misunderstanding to look at this as a use variance, because they are not intensifying the use; the Board can state that in its resolution, as it will remain a three-bay legally non-conforming repair shop, and the additional space will be used as handicap access and shelf storage, not car repair. Mrs. Mandelker asked the dimensions of the other space. Mr. Kerner responded 10 x 14, but he also wanted to clarify that there are two lift posts; the space between the lift and the wall is 29 inches, which is narrower than a wheelchair. Mr. Kerner thinks the minimum for a wheelchair is 32 inches; he stated if there were a car on the lift, Mr. Cascio could not get through. Mr. Kerner stated that you would not want to travel under the car if it were on a lift, as there are hazards. Mr. Casper asked if it were a hazardous condition to walk under a car on a lift; Mr. Kerner responded no.

Mr. Sirignano showed the existing roof lines and stated that the proposed roof line is lower than the existing and will not be visible from the road or the neighboring properties.

Mr. Sirignano handed out copies of the Code. Chairman Price stated per the Code, the Board is not able to increase the non-conformity use of this building except to conform to an order of the Building Inspector to either correct an unsafe condition or to conform to requirements of applicable laws or ordinances. He asked, what the unsafe condition is. Mr. Sirignano said they are not arguing unsafe condition; instead they are arguing it doesn't conform to an applicable law, which is the American Disabilities Act, which requires handicapped accessibility in the workplace. Mr. Sirignano noted that this is a workplace, a legally nonconforming auto repair shop. He continued that it is his opinion we fall within that exception; it doesn't limit it to one ordinance or one law, as it says to any applicable law. The ADA is the law of the nation because all states, all counties, all towns, and all buildings must conform. Mrs. Mandelker added all websites, as that is coming. Mr. Sirignano continued that the Courts have ruled that zoning and planning boards are arms of the state, and they must provide reasonable accommodation and that's what he's asking. He continued that to allow a de minimus variance won't have an impact on neighbors and was not going to increase the business use but will provide a reasonable accommodation for Mr. Cascio's wheelchair accessibilities.

Chairman Price stated that this garage was reconfigured two or three years ago; he stated that doors were changed and the office was moved. Mr. Cascio said the work was done eight years ago; he stated Jimmy O'Connor put that in but it was just a counter. Chairman Price stated that if the ADA was a concern, I think it should have been redone at the time to comply. Mr. Cascio said he owned the building, not the business; he was just a landlord, so why would he make it comply with the ADA at the time if it wasn't needed.

Mr. Casper stated that Mr. Cascio owned the building; owners get involved as do their tenants. He continued that, in fact, tenant's liability travels through the owner, rather than stands independently. He continued that when the Board gets to the ADA portion, it is something they want to do right and they don't want to ever establish the precedent that makes it hard for anyone dealing with disabilities to continue in as great an environment as possible. Not being ADA knowledgeable, Mr. Casper said he would like counsel present to discuss the ADA issue, because he thinks it's the only thing the applicant has. Mr. Casper remarked that Counsel keeps using the word "intensify" but the word is not present in the Code. The Code only says that such structure shall not be enlarged. It talks about the building; not amping up the number of cars you repair. Mr. Casper continued that he is concerned about the ADA element of it and would like someone present on the community's behalf, namely our attorney; he would ask to put off the item. He is not prepared to vote yes as he cannot make a decision regarding the ADA. Mr. Sirignano asked where the other members stood and said, due to a member missing, he may have to ask for an adjournment.

Chairman Price asked about the doorway to the building in the back. Mr. Sirignano stated yes, it is just for Mr. Cascio's personal use, as the business has never been involved with the back building and will not be. Mr. Sirignano advised that if the Board has a problem with that door, they will take it off the plans. Chairman Price stated that his concern is that the door makes it very easy for the back building to get involved with the business and this is going to be a slippery slope from what they are working on presently. He further stated he is not inclined to do this because according to the law, there is not to be any expansion of a non-conforming use unless it's making it more in conformity, which this is not. Mr. Sirignano stated that that is true except if it is done in conformity with an applicable law.

Mrs. Mandelker said that she is in a business where there are new regulations imposed by that ADA, so she feels it would be wise to have counsel present so everybody understands it on the Board because it may supersede some of this.

Mr. Sirignano stated if the matter is held over, they will not object. Chairman Price said he would postpone until next month and contact the Board's attorney, as the attorney had a conflict tonight.

Chairman Price asked if there was any member of the public who wanted to speak; no one responded. Chairman Price placed the application on the agenda for next month.

CAL. NO. 21-18-BZ

Application of Adam Rose, [Rose, Adam R, owner of record], 161 North Salem Road, Cross River, New York, for a variance of Article IV, § 220-23E of the Zoning Ordinance in the matter of a proposed utility shed and generator in an R-4A, Four-Acre Residential District.

The property is located on the east side of North Salem Road, designated on the Tax Map as Sheet 15, Block 10802, Lot 77, in an R-4A, Four-Acre Residential District consisting of approximately 29 acres.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Adam Rose was present, as was his attorney, Michael Sirignano, who described Mr. Rose's property as FarVue Farm, located on the east side of Route 121; he noted among several parcels is Lot 77 which consists of just under 30 acres and includes the main residence and some accessory buildings and structures and Lot 78 which is currently vacant and consists of about 18.5 acres. Mr. Sirignano advised a new residence is being proposed on that site. He described that an electrical transformer had been installed by NYSEG when this was all part of the Hardy Mason subdivision, very close to the lot line on Lot 77. Mr. Rose had erected a small shed, which didn't require a building permit, to house the electrical circuit boxes when he installed the generator near the transformer, its power source. He explained Mr. Rose needs to extend the electrical service from that location where NYSEG has its transformer into Lot 78, including the electrical service provided by the backup generator for the proposed new residence on Lot 78.

Mr. Sirignano continued that the generator and utility shed are two feet from the side line of Lot 77, and fifty feet is required. He stated Mr. Rose owns both affected lots, so that he doesn't have any issue with neighbors or diminution of value of neighboring properties. Mr. Sirignano stated that the Town Ordinance empowers the Board to vary the setbacks where practical difficulties or unnecessary hardships stand in the way of carrying out the strict letter of the ordinance, and the Board can grant variances where it finds 1.) the hardship is due to unique circumstances and not the general condition of the neighborhood. He stated on this Lot we have the transformer that was placed there, according to the subdivision layout. Mr. Rose has all the lots of the subdivision, so it's really a phantom line. The new generator needs to be located near the shed. Mr. Sirignano continued that the second part of the ordinance is that the hardship does not result from anything that Mr. Rose has done. He stated that obviously again this was all laid out during the subdivision process and by NYSEG. He noted the third part of the ordinance is that the strict application of the regulation would deprive Mr. Rose use of Lot 78 and that the variance granted is the minimum necessary. Mr. Sirignano noted that the last part of the ordinance is supported by Mr. Rose owning both parcels, and neither the shed nor the generator can be seen on the property or from the street; he noted that the Board had been there to visit the site. Mr. Sirignano concluded he is happy to answer any questions and that they are looking to pull a building permit for the new residence on Lot 78.

Mr. Sirignano also explained that an easement was also given in the small area between the existing shed and generator and lot line so that legally they can get power into Lot 78. There is already a trench dug, which is open and they hope to have it closed before the winter. Mr. Rose stated that the residence will be applied for in the spring, on an as-of-right building permit; the trench and the utility services to deliver down there are on a building permit right now. Mr. Rose continued that the electrical inspection was completed today, and the trench will be backfilled later this week, as that is on its own permit. He explained that these are three separate things, and he doesn't want to confuse anyone: the structure is next year, the utility trench is almost completed, and the variance is being sought for the generator, which he neglected to get a permit for and, he said, was his fault. Mr. Rose the Building Inspector has asked Mr. Rose to modify the shed, so Mr. Rose is trying to comply with his request.

Mrs. Mandelker stated the property is beautiful and inquired why Mr. Rose couldn't have the shed and generator 50' from the line. Mr. Sirignano said that going 50' would put them in a beautifully landscaped and planted area. Mrs. Mandelker observed that there is a lot of land, so she inquired whether there is there a practical alternative. Mr. Sirignano noted the Board could look at that consideration but it is not determinative, particularly since one lot is undeveloped and the other is highly landscaped and been used for years; he continued that for them to move in 50' for no good reason would disturb planted areas and other landscaped elements. Mrs. Mandelker noted that there is not a neighbor now but thirty years from now, it might be that somebody else buys this parcel, so she questioned the need to have the generator right up against the line. She stated that she is thinking of the future, as a variance can impact what happens in the future. Mr. Sirignano stated that as long as the owners are alive, he doesn't think the property will be separated. Mrs. Mandelker noted she hoped that Mr. Rose would be here in thirty years. Mr. Rose stated Mr. Sirignano wrote an easement at the request of the Building Inspector, taking into account that they are delivering electrical service to the 18-acre lot from the 29-acre lot; regardless of approval, they are trying to be more efficient and deliver it across the parking lot.

Mr. Rose continued that in order to do that, they were asked to write an easement, and said the easement extinguishes if ownership of either of the two lots changes. He continued, to Ms. Mandelker, that it does take into account her concern, and if the easement extinguishes, then something needs to be moved or NYSEG has to be asked to deliver electrical service to the other lot, so it had anticipated within the language of the easement. Mr. Sirignano stated that if it ever came into separate ownership, whoever bought Lot 77, would know this is an open and obvious condition, in that they would know they are buying a property that has a generator and electrical that serves not only Lot 77 but also is sending power to Lot 78. Mr. Casper asked whether Mr. Sirignano was stating that two separate owners would benefit from one generator; Mr. Sirignano replied yes.

Mr. Rose stated there are three or four electrical meters on the property, and they were trying to be more efficient by not having NYSEG have to deliver another meter to the property. He continued that it is highly unlikely that anyone is going to buy any of their structures, as the whole property operates as one. Mr. Rose said that staff lives on the property as well as across the street, so maybe North Salem Road could be sold separately but its unlikely someone would buy and be surrounded by him. Mr. Casper asked whether the shed would be the shed Mr. Rose has, and Mr. Rose said, no, the shed would be shorter and wider. He continued that the Building Inspector asked them to have a 32 or 36, but he wasn't sure which one. Mr. Angiello said the shed that is there is housing equipment, creating a non-conforming condition with the electrical equipment because it doesn't have the proper working clearances in front of the electrical equipment.

To Mr. Casper's next question of, does it matter what size the shed is depending what is in it, Mr. Angiello responded, yes, so right now, the shed is not conforming. Mr. Angiello stated that under 64 feet a regular shed wouldn't require a building permit but would have to meet Zoning regardless, as this isn't just a tool shed, it has equipment in it. He continued that the variance applies to the structure itself. Mr. Rose asked whether the equipment needed to be in a shed; Mr. Angiello said it could be exterior equipment, but Mr. Rose has it in a shed because that is how he takes care of the property. Mr. Angiello said that the equipment in the shed required clearance, so it needs a building permit.

Chairman Price said that there is no variance for the existing generator. Mr. Sirignano responded that was correct. Chairman Price asked whether the line had always been there, and Mr. Sirignano responded yes, it was a subdivision line. Mr. Rose noted he merged the 10 and 8 acre lots together a few years ago via a letter to the Assessor to make it an 18-acre lot; he noted he has been merging lots all over his property.

Mr. Sirignano agrees with the Building Inspector that the shed needs a variance, and they are prepared to ask for the variance. Mr. Casper noted that even if it were just a generator there, he would need a variance because of the proximity. Mr. Rose noted that the generator is the only thing on the property for which he neglected to get a CO for, because it is in the middle of a big piece of land and he didn't notice where the property line is. Mr. Casper then stated that the generator is sitting in the middle of nowhere. Chairman Price noted there is a transformer there from NYSEG and asked where the power came from for that. Mr. Rose stated that the transformer is from the original late 1980's Hardy-Mason subdivision and that NYSEG buried lines to a number of lots. Mr. Rose said he has bought many lots and used those points of delivery to carry electricity to various buildings. He continued that the transformer is not physically there because electricity at this location is fed by one or the other transformers, and he added that Mr. Sirignano is right that NYSEG put the transformer there originally and therefore he put the equipment next to where the wires come in.

Chairman Price asked if there is an easement for that lot. Mr. Rose responded that NYSEG has a number of easements on the property. Mr. Sirignano noted that they are standard utility easements that come up on a title search. Chairman Price stated that he doesn't understand why Mr. Rose cannot put the generator 50' off the line, where it should be and where he has the room, as he could just run a line to it. Mr. Rose said there is no physical impediment to doing that, but they would be moving the generator 50' in the wrong direction from where they are trying to deliver the power. Mr. Rose said the generator operates the pool house, the front gate and has built into it the capacity for the last building. The Chairman asked whether moving it 50' would make it farther away. Mr. Rose said it would be moving the generator 50' away from the building they are trying to service. Chairman Price advised he did not see that as a hardship. Mr. Sirignano said it is existing, it was an expense to install it in the shed where it has been, and it will be an expense to relocate it, and for what purpose. He continued it is not having an impact on the neighborhood or neighboring property owner, it's not visible from the street and it's to service an essentially accessory building on Lot 78. He does not believe it is a disqualifying element; it's just one of five elements to weigh. Mr. Casper stated that it is a self-created hardship but it does not have impact on anyone. Mrs. Mandelker stated she sees it as there being alternatives and is thinking in terms of the future of the property having something like this on the property line; she didn't know where the house or homes would be but that could change.

Mr. Sirignano would like the matter to go over to the December meeting. Mr. Rose said if one of the three members were not in favor, they would not have the votes tonight.

CAL. NO. 23-18-BZ

Application of Malcolm & Eileen Brown, [Brown, Malcolm & Eileen, owners of record], 28 Bouton Street, South Salem, New York, for a variance of Article IV, § 220-23E of the Zoning Ordinance in the matter of an as-built deck in an R-1/4A, One-Quarter-Acre Residential District.

The property is located on the west side of Bouton Street, designated on the Tax Map as Sheet 36E, Block 11165, Lot 16, in an R-1/4A, One-Quarter-Acre Residential District consisting of approximately 0.29 acres.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Steven Helmes from the Helmes Group of Katonah introduced himself as representing Malcolm and Eileen Brown. He stated that his firm was hired about a year ago and gave context about the house, showing the plans. He noted the septic area is in the front of the property and noted the house and wood deck. He stated that essentially the application is to legalize a pre-existing non-conforming deck by seeking a rear yard variance. He noted the house was built about 51 years ago in 1967, and the Browns bought it in 1977-78, living there for about 40 years. Mr. Helmes noted that the Browns may decide to sell it early next spring; however, the deck does not have a CO. He said they checked the files and the house has plans; according to the assessor's card, there was a small deck noted on the survey dated 1967. He advised they checked the file and wanted to get things in order, so they measured the house, created as-built plans, finding that the footprint does encroach into the rear yard setback by 15.87' in a 25' rear yard setback for a ¼ acre zone.

Mr. Helmes displayed a tax map that shows the house directly behind the Brown's house, which also shows quite a buffer between the next house that helps with the situation. He stated they would hate to tear it down and would like to legalize it. He noted it is a pre-existing non-conforming three-bedroom house; the Browns have been living in it but it was not built by them, as it was already built when they bought it. Mr. Brown noted that it was originally a ½ acre lot but the previous owner subdivided it with a deck there; 40 years ago the whole process of a CO was not there, so they bought it as is, with the deck. Mr. Casper thought that when it was subdivided, someone had to have considered it legal at the time. Mr. Brown said he guessed so, but he didn't know how the Town approved the subdivision, if it put the deck in non-compliance. Mr. Casper asked if they happened to look at what the setbacks were 40 years ago. Mr. Brown said he grew up in Yonkers, so he relied up the realtor at the time and had title insurance. Mr. Casper clarified that he was asking if it was definitely illegal or is it pre-existing non-conforming. Mr. Angiello stated that it never had a building permit. Mr. Casper continued that when they did the subdivision, does that suggest any kind of approval? Mr. Angiello said, no, not necessarily; the simplest thing is that it was just missed, that back when they bought it no one was really strict about looking at if something had a building permit or not for a deck. Mr. Casper asked if this house was built before or after the subdivision; it was answered before the subdivision was built.

Mr. Angiello noted that the house had a deck on it then, but it was just smaller. Mr. Casper stated that someone approved putting the line there when the deck was there so it sounds like someone with some authority moved the line toward the deck. Mr. Casper is just wondering if it should be before the ZBA but he would approve it on the basis that it's been there and is questionable whether it is illegal.

Mr. Helmes noted the deck is not oversized, as it's about a 200 square foot deck; Mr. Casper responded the Board had seen the deck. Mr. Helmes said the deck does overhang, so it does provide some storage

and protection for patio furniture. Mr. Krellenstein said that when the Board was at the site, it seemed like every house had a deck, and they all looked pretty similar. He noted he did not see that the Brown's deck was impactful on anyone else's deck, and he takes them at their word that it was inadvertent. Mr. Helmes stated that as an architect, he knows that deck was not built last year. Mr. Angiello noted that it was built before the Browns even owned the house. Mr. Krellenstein stated he did not see the deck as impacting the neighborhood or the community; he sees it as legitimizing something that has been there, through no fault of the Browns. He added that it is consistent with all the other houses whose backyards face each other and all have decks.

The Chairman asked if anyone from the public would like to speak on the matter. Sandra Katter, a local realtor and neighbor of the Browns, agreed that there is no problem in the neighborhood with the decks being a little larger because they were built so long ago, at a time when no one knew about getting a CO. Ms. Katter advised she has the same issue with the deck on her house. The Chairman asked for further comments on the application; there were none.

Mrs. Mandelker moved to approve the application; Mr. Krellenstein seconded the motion. The motion carried, and the application was approved. Case dismissed.

CAL. NO. 24-18-BZ

Application of Brian Bunker, [Bunker, Brian Alan, owner of record], 4 North Lake Circle, South Salem, New York, for a variance Article IV, § 220-23E of the Zoning Ordinance in the matter of an existing above-ground fuel oil tank in an R-1/2A, One-Half-Acre Residential District.

The property is located on the north side of North Lake Circle, designated on the Tax Map as Sheet 34A, Block 11830, Lot 2, in an R-1/2A, One-Half-Acre Residential District consisting of approximately 0.459 acres.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Thomas Peterman of Carmel introduced himself, representing Mr. Bunker. Mr. Peterman explained that he is representing Mr. Bunker on an oil tank that is in the setback of his property by two and one-half feet. The Chairman noted that the Board did conduct a site visit.

Mr. Peterman advised that he felt the tank was in the least conspicuous part of the property and does not believe it is any problem for the next-door neighbor. He stated that the home was built in 1950 and the homes in the Twin Lakes area are built very close together, but the tank is in the most appropriate place, although it extends into the setback by two and one-half feet. Mr. Peterman asked if the Board had seen the photos.

Chairman Price asked if the oil tank had always been in the same spot. Mr. Peterman explained that there was an underground oil tank, and Mr. Peterman was working on Mr. Bunker's behalf to have the new tank approved when it was determined that the new tank was in the setback, requiring this process and approval of the tank. He added that there was one in the front of the property that was removed; Mr. Bunker had hired a contractor from Dutchess County, who came and was paid, removed, then installed the new tank. He advised that, although the permit is Mr. Bunker's responsibility, the contractor did not go through the proper channels, in getting approval and filing for a permit. He noted that is the next step, should the Board deem to approve the application.

Chairman Price asked whether Mr. Bunker had a permit to install the new tank. Mr. Peterman responded that Mr. Bunker had no permit at the time the tank was installed. Chairman Price asked whether there had been any complaints about the tank from any of the neighbors. Mr. Peterman stated that to his knowledge, there have been no complaints; Mr. Bunker agreed that there had been no complaints.

Chairman Price asked whether anyone on the Board wished to comment on the application. With no comments, the Chairman again noted that the Board had been out to the site two weeks previous and said that you really had to look for the tank to be able to see it from the driveway. He continued that if there haven't been any complaints from the neighbor next door, and not knowing that there are any practical alternatives in the back but that the tank has to go where it is to get to the burner, he moved that the application be approved. It was seconded by Mrs. Mandelker. The motion was carried, and the application was approved. Case dismissed.

III CORRESPONDENCE & GENERAL BUSINESS

Mr. Krellenstein moved to adjourn the meeting at 9:13 P.M. The motion was seconded by Mr. Krellenstein. The motion was carried.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Hafter".

Mary Hafter
Secretary, Zoning Board of Appeals